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16TH DISTRICT, CALIFORNIA

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SUBCOMMITTEE ON ECONOMIC SECURITY,
INFRASTRUCTURE PROTECTION, AND CYBERSECURITY
SUBCOMMITTEE ON MANAGEMENT, INTEGRATION,
AND OVERSIGHT

• **COMMITTEE ON HOUSE ADMINISTRATION**

Congress of the United States
House of Representatives
Washington, DC 20515-0516

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January 27, 2006

The Honorable Rob Simmons
Chairman, Subcommittee on Intelligence, Information Sharing
& Terrorism Risk Assessment
Committee on Homeland Security
215 Cannon House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Simmons:

A year ago you and I were named Chairman and Ranking Member, respectively, of the Homeland Security Subcommittee on Intelligence, Information Sharing and Terrorism Risk Assessment. I had high hopes for what we would be able to accomplish together.

As you well know, a major responsibility of the Intelligence Subcommittee is to provide oversight of intelligence and information sharing techniques for the purpose of preventing, preparing for, and responding to potential terrorist attacks. Unfortunately, the Subcommittee has not discharged this responsibility relative to domestic surveillance for homeland security purposes by the NSA. I find it hard to defend this failure.

The recent revelations of warrantless domestic wiretapping require that we initiate the Intelligence Subcommittee's oversight activities. Over the past month, it has been reported that the President and Attorney General have authorized, and that the National Security Agency (NSA) has engaged in, wiretaps without warrants of persons inside the United States. It appears that such domestic surveillance violates section 1802(a) of the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1802(a). That law permits electronic surveillance of communications without a court order only if the Attorney General certifies that (1) these communications are exclusively between or among foreign powers; and (2) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party. According to the report in *The New York Times*, our government appears to have routinely violated

these prohibitions by conducting surveillance on at least 500 and possibly thousands of individuals located in the United States, "including American citizens [and] permanent legal residents" who are United States persons within the meaning of FISA.

I have attempted to get information about this situation from the Department of Justice and the Department of Defense. Enclosed are copies of the letters I have sent on this subject for your reference, as well as responses I have received to date.

It seems clear to me from the responses I have received that the Administration is resisting the need to report to me as an individual Member of Congress about these questionable activities. Based on reports in the press, it is hard to avoid the conclusion that the Administration has failed to comply with the requirements of the law. Indeed, the report received from the Department of Justice last week seems to suggest that the Administration believes it has no duty to comply with the laws governing intelligence collection, laws that were passed by Congress and signed into law by the President. This would be, as I imagine you agree, quite a departure from our government's system of checks and balances and the rule of law that has served America so well for the last 217 years. Nevertheless, I am eager to hear from the Administration a set of facts that might allow us to reach the conclusion that they have acted within the law and within the Constitution.

Congress must reassert its oversight authority over our nation's intelligence gathering techniques in response to this situation. To date, the Intelligence Subcommittee, which has the authority to look into these matters, has not provided that oversight.

As Chairman, you have the power to change this. As Ranking Member, I have only the power to suggest a course of action to you. I call on you to schedule hearings immediately on these matters. Only by addressing these issues forcefully, and in a timely manner, will we truly serve as an independent and co-equal branch of government that inspires faith and confidence in our democratic society. There is simply too much at stake for us to do any less.

Sincerely,

A handwritten signature in black ink, appearing to read "Zoe Lofgren", with a stylized, flowing script.

Zoe Lofgren
Ranking Member; Subcommittee on Intelligence, Information Sharing
& Terrorism Risk Assessment
Committee on Homeland Security